

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

ROY MANDELL SMITH,

Plaintiff,

v.

JERMAINE WHITE, Warden;
JORDAN WICKER, Deputy Warden of
Security; and VERONICA STEWART,
Deputy Warden,

Defendants.

CV 321-055

ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation ("R&R"), to which objections have been filed. (Doc. no. 5.) The Magistrate Judge recommended dismissing the case without prejudice because Plaintiff has three strikes under 28 U.S.C. § 1915(g). Plaintiff argues the Magistrate Judge incorrectly assigned a strike to one of Plaintiff's previous cases "as malicious" but the District Judge "clearly dismissed that case in writing as 'without prejudice,'" and therefore, did not count as strike for maliciousness under the Prison Litigation Reform Act ("PLRA"). (*Id.*).

As the Magistrate Judge noted in the R&R, Plaintiff's three strikes derive from two dismissals for failure to state a claim and one dismissal as malicious for lying. (Doc. no. 3, pp. 2). It is of no consequence that the third case was dismissed without prejudice. Indeed, "an action is malicious when a prisoner misrepresents his prior litigation history on a

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complaint form requiring disclosure of such history and signs the complaint under penalty of perjury, as such a complaint is an abuse of the judicial process.” Burrell v. Warden I, No. 20-14304, 2021 WL 3745331, at *2 (11th Cir. 2021) (citing 28 U.S.C. § 1915(e)(2)(B)(i)). Therefore, the Magistrate Judge correctly found Plaintiff has three strikes under § 1915(g).

Accordingly, the Court **OVERRULES** Plaintiff’s objections, **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, **DENIES** Plaintiff’s request to proceed *in forma pauperis*, (doc. no. 2), **DISMISSES** this action without prejudice, and **CLOSES** this civil action.

SO ORDERED this 27th day of October, 2021, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE